

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Accelerating Wireless Broadband Deployment by)	WT Docket No. 17-79
Removing Barriers to Infrastructure Investment)	
)	
)	
)	

COMMENTS OF:

Chippewa Cree Tribe

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The Chippewa Cree Tribe of the Rocky Boy's Reservation

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Ex Parte Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Ms. Dortch:

In response to FCC-CIRC1803-01, the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation has reviewed and considered the implications of and underlying causes for the streamlining the deployment of the next generation wireless facilities and review the needless burdens and slow infrastructure deployment. The Chippewa Cree Tribe opposes any changes National Historic Preservation Act (NHPA) review particularly the interpretation of a "federal undertaking" within the meaning of NHPA or major federal action under National Environmental Policy Act (NEPA). The Chippewa Cree Tribe also opposes the changes to Section 106 historic preservation reviews and disagrees that the Federal Communication Commission (FCC) as properly consulted with Tribal Nations.

1. Tribal Consultation-

- a. **Paragraph 16** Government to Government Relationship- The FCC, its Wireless Bureau, and its Office of Native Affairs and Policy (ONAP) never properly nor formally consulted with Tribal Nations in regards to these industry-focused changes to the Section 106 review. We agree that the FCC held meetings with the Tribal Nations but those listed were in the form of listening sessions with no real opportunity to state the views of the Tribes as there was no agenda and the Chippewa Cree Tribe and the other Tribal Nations did not have the text of the Report & Orders or any other FCC document to which to comment on directly with the FCC and its Commissioners and Staff. Tribal Nations were never apart of the process and the data that was used to justify is not verifiable and Tribes were not allowed to be apart of the process from the start.

- b. **Paragraph 18-** The Chippewa Cree Tribe was present at the meeting on June 14, 2017 and the FCC never stated these proposed changes and the Tribe stated this meeting was not a consultation within the definition of consultation to the Tribe, or that used by either the National Park Service (NPS) or the Advisory Council on Historic Preservation (ACHP).
- c. **Paragraph 19-** The Chippewa Cree Tribe was present on the Rosebud Sioux Reservation on June 8, 2017 and the FCC did not offer these proposed changes to the Tribes to consider or comment on. The Tribe stated the proposed meeting was not a consultation.
- d. **Paragraph 20-** As mentioned above the Chippewa Cree Tribe did meet with Chairman Pai and these potential changes to the Section 106 process, as developed by the FCC, were never mentioned by the FCC. In addition, the meeting focused on tribal broadband rather than the Section 106 process.
- e. **Paragraph 21-** The Chippewa Cree Tribe were present in Eugene, OR and the discussion was focused on Twilight Towers and with the FCC refusing to answer any questions in regards to their location and dialogue was discussed in regards to the Second Report and Order.
- f. **Paragraph 23-** The Chippewa Cree Tribe were present at the National Tribal Historic Preservation Officers Association meeting in Pala, CA. The FCC never stated the potential policy shifts and changes being proposed in the Second Report and Order nor did they implicate that they were coming forward.
- g. **Paragraph 25-** The Washington DC meeting failed to meet the standards of a government consultation and nor were the proposed policy changes discussed. The FCC failed disclose that they were considering these significant policy changes or any other matters pertaining to the Second Report and Order.
- h. In the Second Report and Order there is no reference to FCC's Draft Program Comment for the Federal Communications Commission's Review of Collocations on Certain Towers Constructed Without Documentation of Section 106 Review ("Draft Program Comment") released on December 14, 2017. The Chippewa Cree Tribe would like clarity on how the Twilight Tower public comment relates to the Second Report and Order. It is unclear and not mentioned in the Second Report and Order which needs to be addressed.

2. Communications Facilities as an Undertaking-

- a. **Paragraphs 35, 70, 80-** The Chippewa Cree Tribe objects to the FCC approach to the Section 106/NEPA process to what it terms as "small cell facilities." While much of the 5G infrastructure will not have an effect on Tribal religious and cultural properties, many of these facilities involve

ground-disturbing activities that can disturb archeological sites that include human remains and funerary objects, medicinal plants as well as sites associated with the Tribal removal trails forced upon the Tribal Nations by the Federal Government. While the 50-foot height seems to include utility poles in rights of way (ROW), these ROWs are often undisturbed corridors outside of the highway infrastructure pathway. We encourage the FCC to use the exemption process outlined in the Collocation Agreement that has already been vetted and approved by the ACHP, the State Historic Preservation Officers, and reviewed by the Tribal Nations.

- b. Paragraph 88-** In reading this paragraph, it is unclear as to the meaning of the FCC's intentions with regard to those communications facilities between 50 and 200 feet. In reviewing other FCC documents and in our review of the official FCC training webinars for the past several years, the FCC staff have always insisted that the height of a tower or facility is not an issue and that all such constructions require Section 106 review due to the fact that the facility is being proposed to host licensed communications facilities either as part of a geographic license or as part of a site license that is typically issued to a public safety or broadcast entity.

3. TCNS and Tribes-

- a. Paragraph 65-** While the Chippewa Cree Tribe appreciates the TCNS system, that system is simply a notice tool that does not properly capture the volume of projects submitted to the Tribes. The FCC has long recognized that TCNS is old software and that updates are needed to modernize the notification system. At several meetings of the National Tribal Historic Preservation Officers and in the FCC's formal training programs for Section 106 and for NEPA, the FCC has openly discussed its desire to update the system and has asked the Tribes to suggest improvements.
- b. Paragraph 65-** Tribes have been active in protecting their Tribal religious and cultural properties on its ancestral lands. Industry has consistently failed to understand many Tribes were nomadic and that almost all Tribes have been forcibly removed from their traditional lands by the Federal government. The Chippewa Cree Tribe's ancestral lands extend into northeastern Pennsylvania but we were forced to migrate west by the increased westward movement of the European peoples. We cite, for instance, the Pennsylvania town known as Chippewa as just one example that remembers our presence there.

4. Project Reviews where TCNS does not Reflect Adverse Findings

- a. Paragraph 69-** The Chippewa Cree Tribe, along with other Tribes, disagrees with the unsubstantiated assertion of the FCC that the Section 106 process

with the Tribes does not result in the protection of Tribal religious and cultural sites. Because TCNS is a notice system, it does not record the many instances where the Chippewa Cree Tribe has worked directly with applicants to move towers away from Tribal historic properties.

- b. Paragraph 69-** If the TCNS system were upgraded to follow the example of the FCC's E106 system to track changes to the effect recommendations, the FCC would have a more accurate understanding of the direct involvement of the Tribes in our efforts to improve the siting of communications facilities. In cooperation with industry, we have been able to protect medicinal plant sites in Pennsylvania and in Montana along with religious sites throughout Montana that include many stone features. Stone features are problematic for the Tribes in that many archeologists do not understand how they present themselves on the landscape and how they relate to Tribal traditional customs.

5. Consultants to Perform Cultural Reviews-

- a. Paragraph 116-** The FCC wrongly proposes that industry can use its own qualified consultants to identify and evaluate the effect of its projects on Tribal religious and cultural sites. This directly contradicts ACHP regulations at 36 CFR part 800 and its guidance to Federal agencies. This effort also is contrary to the NPS guidance shown in its Professional Qualifications standard. The Chippewa Cree Tribe has direct experience with the inability of "qualified" archeologists not being able to directly see Tribal religious and cultural sites. We cite, for example, TCNS#95156, where the consulting archeologist for the applicant failed to identify a stone feature found by the Tribal elder and monitor who walked the same site. FCC staff members, both current and retired, have witnessed the same situation where an archeologist told the staff and assembled Tribal THPOs that there were no sites at a location only to be told that they were standing within a site and just away from burials. In at least one instance, a senior Verizon employee from its headquarters staff was present.

6. Industry Data-

- a. Data on Tribal Cost-** Paragraph 10 States that Sprint has estimated that it has spent \$2,000 per site for an Environmental Assessment (EA) that of the tens of millions dollars spent on NEPA checklist and EA's that there is no finding of significant impact. This use of data as facts is completely unsubstantiated and is not verified by FCC nor Tribes. The FCC is allowing Industry to provide data that cannot be verified for accuracy and using these numbers to make significant policy decisions that affect Tribal governments, that is a complete disregard for government-to-government consultation.

- i. The Chippewa Cree Tribe has conducted multiple Section 106 reviews with a variety of telecommunication companies and we refute the claims finding of no significant impact (FONSI) being cited by Sprint & Verizon in the document.
- ii. **Paragraph 11** states “The record indicated that the primary source of concern is the cost of the Tribal review process that is part of our Section 106 obligations.” This statement is obviously referring to the Industry record and does not address the Tribal concerns in regards to Section 106 process. It is our experience that delays occur because Industry had not supplied adequate information to complete the Section 106 review. The advancement of THPOs understanding and engagement doesn’t correlate with fee increases not with the current proposed changes rather on the level of sophistication and awareness of FCC’s TCNS Section 106 process. The TCNS process is intended for all Tribes that have an interest in particular with their trust and aboriginal lands that are sacred due to cultural and historic significance by the NHPA.
- iii. **Paragraph 12** The Chippewa Cree Tribe suggests that a survey instrument should be conducted with Tribes to validate the industry’s comments referenced from the 17-79 docket. To our knowledge we have never been asked by the FCC regarding about the verifiable and unsubstantiated statements for the Section 106 cost for research and pedestrian reviews by the Tribes. Rather, FCC should work with Tribes to better track fees and address cost issues on case-by-case basis. As stated in earlier comments, we recommend that FCC work with Tribes and Industry in a collaborative manner to resolve specific matters that don’t necessarily apply to all Tribes. This is very concerning that more than likely only a small percentage of the 567 federally recognized Tribes aren’t participating in a collaborative way. The data referenced is an inaccurate statement and exact opposite of the Chippewa Cree Tribe’s Section 106 review process.
 - 1. **Paragraph 13** The Super Bowl example that was blown out of proportion and if the Tribes, Industry, and FCC worked together on this project the potential issues could had been mitigated. For the Section 106 review to work it takes all three participants (Tribes, Federal agency and Industry) to work collaboratively utilizing the TCNS for big projects to be successful and timely.

iv. **Paragraph 14-15** As mentioned before the increase in fees is not substantiated numbers and the Tribes have never been given an opportunity to review these alleged numbers presented by Industry to FCC. Rather, the FCC has taken these numbers as facts and the Tribe disagrees with the alleged increase and their application and use in this Report and Order.

- b. The Chippewa Cree Tribe would formally request that a survey be conducted with Tribes by FCC addressing the data for the Section 106 process and the TCNS. The data that is being used to substantiate the purpose of the Second Report and Order is not verified.

In conclusion, the FCC's Draft Second Report and Order basis and reasoning is flawed and excludes Tribes' perspective on tribal consultation. The FCC has not honored their government to government relationship throughout this process and has succumbed to needs of Industry. The lack of tribal consultation is appalling and the use of figures and examples from Industry to attack the Section 106 process and the ability for Tribes to preserve cultural and historic properties is of great concern to the Chippewa Cree Tribe. The Tribe requests that the Draft Second Report and Order should factor in all Tribes comments, recommendation and issues submitted for the 17-79 docket. We hope the FCC will issue a revised and improved document for the March 22nd FCC Open Meeting.

Sincerely yours,



Harlan Baker
Chairman
Chippewa Cree Tribe

cc: Senator Tom Udall (D-NM)
Senator John Hoeven (D-NM)
Senator Jon Tester (D-MT)
Senator Steve Daines (R-MT)
Congressman Greg Gianforte (R-MT)
Jeffrey Steinberg, Deputy Chief,
Competition and Infrastructure Policy Division, FCC,
Jill Springer, Federal Preservation Officer, FCC

Charlene Vaughn, Assistant Director Federal Permitting, Licensing and Assistance Section, ACHP;

Valerie Hauser, Director Office of Native American Affairs, ACHP;

Matthew Duchesne, Chief, Office of Native Affairs and Policy, FCC